

LAW OFFICES OF
KNOPF & BROWN
401 EAST JEFFERSON STREET
SUITE 206
ROCKVILLE, MARYLAND 20850
(301) 545-6100

FAX: (301) 545-6103
E-MAIL BROWN@KNOPF-BROWN.COM
WRITER'S DIRECT DIAL
(301) 545-6105

DAVID W. BROWN

July 9, 2013

Chairman Anthony J. Hood
and Members of the Commission
Office of Zoning
Government of the District of Columbia
One Judiciary Square
441 4th Street NW
Suite 200S
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2013 JUL -9 PM 12:00

Re: **Z. C. Case No. 10-28**
901 Monroe Street, LLC
(Consolidated PUD & Related Map Amendment @ Square 3829)

Dear Chairman Hood and Members of the Commission:

This letter and its two enclosures are submitted on behalf of the 200-Footers, a party to the above-captioned proceeding, in response to the Commission's June 11, 2013 Revised Procedural Order on Remand ("Procedural Order"). In the Procedural Order, the 200-Footers were provided the opportunity to respond to the Applicant's proposed order on remand, identifying "any alleged errors or omissions in the findings of fact and conclusions of law stated in the proposed order." *Id.* at 2.

As detailed in the enclosures, the 200-Footers find the Applicant's proposed order to be replete with both errors and omissions. The most fundamental problem is the Applicant's erroneous conclusion that the Court of Appeals "affirmed" the Commission's decision in Order No. 10-28 in this case. This and other errors in the proposed order are detailed, paragraph-by-paragraph, in the enclosure containing the 200-Footers comments directed at the proposed order. Among many other points, the 200-Footers explain that the remand task for the Commission is to make findings in the areas identified by the Court, and any other necessary findings, and then evaluate afresh the question whether the project should be approved as a PUD-C-2-B rezoning.

The 200-Footers maintain that, when the Commission re-examines the merits of the application in the wake of making the findings that the Court concluded should have, but were not, made in Order No. 10-28, the only defensible conclusion is that the application should be

ZONING COMMISSION
District of Columbia
CASE NO. 10-28
EXHIBIT NO. 348

denied. Hence, the 200-Footers believe that, to be fully responsive to the Procedural Order, it is necessary and appropriate for them to present the Commission, along with their comments on the Applicant's proposed order, a proposed order of denial. This is the second enclosure to this letter.

While the 200-Footers have set forth myriad record-based reasons why the application should be denied, among the most compelling is grounded in the fact that the project takes up 80% of Square 3829, a Square which OP advised Commissioner May at the Commission's March 14, 2011 business meeting is three-quarters "low density, residential on the land use map." Tr. 47. This prompted Commissioner May to observe that "what's being proposed here is three quarters of the square being developed at moderate or more and mixed use. I mean, I'm not sure how I see how it fits ...I don't feel totally comfortable given that divergence from what we know of the Comprehensive Plan." Tr. 63-64.

On this point, in remanding the Court of Appeals noted that the Commission "relying on OP's report ... found that the 'project's density and height are not inconsistent with what the [FLUM] shows for over one-half of the [developer's] site.'" Durant v. Zoning Commission, ___ A.3d ___, slip op. at 19 (D.C. May 16, 2013). The Applicant's original proposed order (Finding #28) repeated OP's "more than half" error, which the Commission adopted in its Order. The Court concluded "that the Commission must explicitly resolve the FLUM-designation dispute and explain whether, and how, its resolution of the issue affects its ultimate decision." Id. What the 200-Footers have done is detail for the Commission the proper resolution of this and other issues and the reasons why that resolution does affect the ultimate decision in this case.

In order to avoid needless duplication, the 200-Footers have elected to document their proposed findings and conclusions in the denial order, and not repeat them in their comments on the Applicant's proposed order. The end result is that much of the documentation for their comments is found not in their comments, but rather in their denial order. In addition, rather than attempt to itemize all the problematic omissions in the Applicant's proposed order, the denial order is intended to serve as a complete replacement for, rather than supplement to, Order No. 10-28, and incorporates all of the relevant points that the 200-Footers found omitted from the Applicant's proposed order.

I also wish to emphasize here that in many, many respects the denial order closely tracks Order No. 10-28, in both words and substance. There is some rearrangement of the order in which matters are addressed, but the denial order makes only the minimal changes necessary to resolve contested issues, to make corrected findings and conclusions in light of a reappraisal of the record, and to reflect that it is an order of denial rather than of approval. For example, the 200-Footers have reiterated certain findings that the Commission made in Order No. 10-28 adverse to the 200-Footers where those findings were not implicated in the proceedings in the Court of Appeals. These are matters that the denial order effectively resolves in the Applicant's favor, and, as such, are matters unlikely to be contested in the event the Applicant were to

Chairman Anthony J. Hoc
and Members of the Commission
Office of Zoning
July 9, 2013
Page 3

thereafter resubmit for redevelopment of the property as a C-2-A PUD rezoning. This would be a redevelopment of the property that was initially proposed by the Office of Planning and one which the 200-Footers made clear in this proceeding that they would support. If the Applicant were to submit a C-2-A PUD rezoning case, the Commission would need to include in its Order the protective Construction Management Agreement provisions which were in its June 8, 2012 Order No. 10-28 as Decision ¶B.8 (on pp. 32-40).

With this submission, the 200-Footers understand from the Procedural Order that no other filings will be accepted and that the case is now once again ripe for decision. Should the Commission deem it fruitful for the parties to appear for purposes of oral argument, undersigned counsel will be available for that purpose at the Commission's July 29, 2013 meeting, or such later time as the Commission might designate.

Very truly yours,

A handwritten signature in black ink, appearing to read "David W. Brown", with a long, sweeping horizontal line extending to the right.

David W. Brown
Counsel for the 200-Footers

/enclosures

cc: Paul Tummonds, Esq. for the Applicant
ANC 5B c/o Chair Shirley Rivens Smith
Tom Bridge, BNCA President

**BEFORE THE ZONING COMMISSION FOR
THE DISTRICT OF COLUMBIA**

**Z. C. Case No. 10-28
901 Monroe Street, LLC
(Consolidated PUD & Related Map Amendment @ Square 3829)**

**200-FOOTERS' IDENTIFICATION OF ERRORS AND OMISSIONS IN THE
APPLICANT'S PROPOSED ORDER ON REMAND**

Pursuant to the Zoning Commission Revised Procedural Order on Remand in this proceeding, the 200-Footers, a party respondent, through undersigned counsel, submits its identification of errors and omissions in the Proposed Order on Remand submitted by the Applicant, 901 Monroe Street, LLC. The 200-Footers' comments are by paragraph number of the 40 proposed Findings of Fact and of the 7 proposed Conclusions of Law. Omission of any particular paragraph below should be understood as the 200-Footers having no objection to the omitted paragraph. The 200-Footers also address the introductory material included in the Proposed Order.

INTRODUCTORY MATERIAL

The Proposed Order glaringly misstates the results of judicial review in the Court of Appeals. The Applicant claims "the Court of Appeals affirmed the Commission's decision except to remand for additional findings of fact and conclusions of law." Proposed Order at 1. The Court did no such thing. The Court did not "affirm" the Commission's decision in Order No. 10-28. Rather, the Court concluded that there were "errors and omissions" in Order No. 10-28. Durant v. Zoning Commission, ___ A.3d ___, slip op. at 17 n.12 (D.C. May 16, 2013) ("Opinion"). In fact, the Court's Opinion is explicit in concluding that the disputed issues on which findings and conclusions are needed "are sufficiently significant to require a remand for

additional findings of fact and conclusions of law.” Id. at 3. Accordingly, a remand was ordered to make, in addition to certain specific findings the Court concluded were missing on contested elements, “any other necessary findings of fact and conclusions of law, in accordance with this opinion.” Id. at 26. This requirement is simply inconsistent with the notion that there is any predetermination by the Court that, once proper findings are made, the conclusion will be approval of the application. Indeed, a key concern of the Court was the failure of the Commission to resolve the question of how much of the Property is designated on the FLUM for Low Density Residential Use. Id. at 18-19. The Court concluded that “the Commission must explicitly resolve the FLUM-designation dispute and explain whether, and how, its resolution of the issue affects its ultimate decision.” Id. at 19 (emphasis added). Such instructions from the Court are starkly inconsistent with the Applicant’s claim of “affirmance” by the Court.¹

In this case, the Commission certainly had available to it the option of directing this matter into a supplemental hearing on the unresolved issues identified by the Court, but elected not to do so. The 200-Footers do not disagree with the implicit determination by the Commission that the issues could be resolved on the current hearing record. This procedural decision, however, does not alter the fundamental posture of this case: the Commission must make findings on the matters specified by the Court, and, after that, examine afresh whether, in light of those findings, the application should be approved. The fundamental error in the

¹ More generally, a remand order is not ordinarily understood as the Court putting the Commission through a paperwork exercise without any prospect of ultimate consequence. The whole point of having the Commission undertake the task of making missing findings on materially contested issues is to facilitate its consideration whether, once the Commission has grappled with the issues raised and as yet unresolved, the original conclusions of law, including project approval, still follow. As made clear in Washington Ethical Society v. District of Columbia BZA, 421 A.2d 14 (1980), a remand in such circumstances “is not solely for the purpose of redrafting findings and conclusions to facilitate our review and reinforce the Board’s decision. The Board may conduct further hearings or even reach a different result.” Id. at 19 (citations omitted; emphasis added).

Applicant's Proposed Order, however, it that it evaluates the record evidence on the contested issues in a conclusory fashion intended to justify a preordained result of approval. The Commission should not repeat this error by adopting the applicant's Proposed Order; it should carefully evaluate the proposed findings and conclusions set forth in both the applicant's Proposed Order of approval and the 200-Footers' Proposed Order of denial. For all the reasons set forth below and in the 200-Footers' Proposed Order, the only defensible conclusion is that the application must be disapproved.

FINDINGS OF FACT

The Land Use Element

Before turning to the Applicant's specific proposed findings of fact on this Element, the 200-Footers note that they have treated this element more comprehensively in the discussion of Comprehensive Plan Elements in their Proposed Order, both in terms of its relationship to development in proximity to Metrorail stations, and to the Project's impact on the stable, single-family Brookland neighborhood into which it is proposed to be placed. The focus below is on what the Applicant has said, not what it has omitted. The omissions are dealt with by virtue of the 200-Footer's more complete and comprehensive Proposed Order.

1. The Applicant's notion that the Comprehensive Plan and the Small Area Plan (SAP) "must be considered in totality, not by individual land use elements," is a misleading description of the proper role of the Commission in evaluation of a PUD rezoning application. The Court in this case made clear that "it is insufficient [for the Commission] to recite that a particular action is consistent with the Plan as a whole" Opinion at 25. The Court made clear that "the Commission, when presented with a material contested issue, [is required] to address that issue and explain its conclusion. Id. In other words, all Plan Elements identified as having a material

bearing on an application must be explicitly taken into account by the Commission in reaching its ultimate decision; no material Plan Element can be disregarded with resort to the “Plan as a whole rubric,” as was repeatedly done in Order No. 10-28.

3. The proposed finding addresses certain aspects of locating mixed-use development in proximity to a Metro station that are not in dispute in this case. The problem, as detailed in the 200-Footers’ Proposed Order, is that these aspects can also be achieved via a less dense Metro-proximate mixed use project, and LU-1.3 expressly contemplates a “ ‘stepping down’ of densities with distance away from each station, protecting lower density uses in the vicinity.” The proposed finding ignores this, the most critical part of LU-1.3.

5. The proposed finding is subject to the same objection as proposed finding 3.

6. This paragraph repeats the error of Order 10-28 in dispensing with concerns about neighborhood impact and preservation, as extensively detailed in the 200-Footers’ Proposed Order. The Applicant relies upon undefined “unique characteristics” of the immediate area and “specific features” of the Project, and repeats the Commission’s earlier error with vague reliance on “their totality” in order to justify Project approval.

8. The 200-Footer’s Proposed Order, citing the record evidence at length, explains in detail why the Applicant’s claim that the Project “respects the character, scale, and integrity of the adjacent neighborhoods” is completely unjustified. The Project is not in any of the locations identified in the SAP for transit-oriented development adjacent to the Brookland/CUA Metro station. Moreover, the densities that the Comprehensive Plan and the SAP support for this area are the densities recommended in the FLUM, which are well below what is proposed, as extensively detailed in the 200-Footer’s Proposed Order. The uncontested evidence in the record that actually examined the contrast between the six to six-and-one-half story apartment building

and the adjacent properties, presented by architect Richard Houghton, squarely refutes the claim that “dramatic contrasts between the Project and the surrounding areas” have been avoided. Finally, though the Commission is obliged to give great weight to OP’s recommendation, it cannot do so when so starkly at odds with the uncontested factual record.

11. The Applicant would have the Commission find that tearing down and removing four existing single-family homes that, on this record must be considered to be in good and habitable condition, “is necessary in order to complete the Project.” This turns the logic of decisionmaking on its head by assuming, as justification for the teardowns, that the Project should be approved in exactly the form presented to the Commission. There is, for example, no evidence in the record to show that the Applicant could not have redeveloped the remainder of the Property with mixed use moderate density development even as it left the houses targeted for demolition intact. Indeed, all the benefits of the Project alleged, but not demonstrated, to “outweigh” tearing down homes in good condition, may very well be achievable without including these homes in the Project. If that is not the case, the record fails to so demonstrate. It is simply an implicit, unproven predicate for the Applicant’s “outweigh” analysis.

13. The 200-Footers do not disagree with the Applicant’s proposed finding 13. It is included in this list only to emphasize that agreement on this finding alone could be determined by the Commission to be sufficient basis for Project denial.

14. The comments above on proposed finding 8 are applicable here as well. As detailed in the 200-Footer’s Proposed Order, the Applicant’s setback claims are exaggerated, and would be adversely impactful even if correct. Marginal tweaks, such as landscaping and refinements in the building’s appearance do little to ameliorate its massive size and dominance of adjacent properties within Square 3829 or across 9th, 10th and Lawrence Streets, as detailed by Mr.

Houghton and recounted in the 200 Footers' Proposed Order. Further, whether the Project will provide public amenities or an enhanced transportation demand management plan have little or nothing to do with the basic facts of size and scale mismatched for this single-family neighborhood. And, once again the Applicant resorts to vague balancing of Plan Elements, with particular emphasis on encouraging new mixed use transit oriented development, when there is no evidence that such development cannot be achieved at this site at a lesser scale. Indeed, the evidence is to the contrary, as the 200-Footers made clear in their testimony that they would support redevelopment of the Property as a C-2-A PUD rezoning. (Ex. 296, p. 1). Finally, although the Commission is obliged to give great weight (not deference) to OP's recommendation, it cannot do so when so starkly at odds with the uncontested factual record.

17. The 200-Footers understand this proposed finding to be dealing solely with the commercial, i.e., ground floor retail, portion of the project. As such, they do not disagree with it. This underscores that the 200-Footers' opposition to the Project is not based in any part of the decision to provide a limited amount of commercial space in the Project as ground floor retail on Monroe Street. But, as made clear in the 200-Footer's Proposed Order, the gross floor area of the commercial space is little more than 6% of the total gross floor area of the Project; therefore, the paramount consideration in evaluating the Project is the impact of the 94% of the building that is comprised of residential dwelling units.

The Upper Northeast Area Element

As with the Land Use Element, the 200-Footers respectfully refer the Commission to their more complete and comprehensive discussion of this Element in the discussion of the Comprehensive Plan Elements in their Proposed Order. What follows is responsive to what the Applicant has said in its Proposed Order regarding the Upper Northeast Area Element.

21. There is no claim in this case that new development is prohibited in Upper Northeast Area neighborhoods, including Brookland. This proposed finding is therefore directed in part at what is uncontested. The remainder is a repetition of the vague balancing that is pervasive in the Applicant's Proposed Order, as detailed above for the Land Use Element. Similarly, the Applicant again refers to OP's "balancing" analysis, when, as detailed above, that very approach is what caused the Court of Appeals to remand Order No. 10-28 in the first place.

22. This finding yet again repeats the flawed, vague and inconclusive "balancing" approach to the record. In addition, the 200-Footers do not disagree with the abstract claim that, consistent with the Comprehensive Plan, this site could be developed as "Moderate Density." The problem is that, as detailed extensively in the 200-Footers' Proposed Order, what is proposed for this site must be viewed as "Medium Density." In a single-family residential neighborhood such as this, the difference in scale and compatibility, as between a moderate density apartment building (characterized in the FLUM as "low-rise"), and a medium density apartment building (characterized in the FLUM as 4-7 stories) is dramatic. And this proposed building, at six to six-and-one-half stories, is near the upper end of medium density.

23. The record does not support the Applicant's justifications for claiming that a massive, six to six-and-one-half story apartment building, occupying 80% of Square 3829, leaving in isolation in the Square six single-family homes, and confronting five single-family residences used as such across 9th, 10th and Lawrence Streets, "will not destabilize the existing residential neighborhood." The comments made on findings 8 and 14 are applicable here.

24. There is no claim in this case that new development is prohibited along 10th Street. This proposed finding is therefore another case, as in finding 21, of attempting to justify what is uncontested.

25. This finding is nothing more than the rote repetition of the flawed and vaguely presented “as a whole” claim, along with exaggerated, nonsensical and unsupportable claims that “design features” will not just ameliorate the stark contrast between the massive apartment building, but actually “protect the low-scale residential character of the surrounding neighborhood” (emphasis added).

The Future Land Use Map

As with the Comprehensive Plan Elements, the 200-Footers respectfully refer the Commission to their more complete and comprehensive discussion of the Future Land Use Map (“FLUM”) in their Proposed Order. What follows is responsive to what the Applicant has said in its Proposed Order regarding the FLUM.

26. The fact that the FLUM is not a zoning map, is not parcel-specific, and does not set forth specific development standards are all irrelevant to the reality of the role that the FLUM is required to play in rezoning decisions such as this case. As detailed in the 200-Footers’ Proposed Order, the FLUM is sufficiently detailed to provide the Commission guidance on the future zoning of properties, if not at the parcel level, then at least at the Square level, if not more precisely than that. Following that guidance is not optional for the Commission; the FLUM, duly adopted by the City Council, “uses color-coded categories to express public policy on future land uses across the city,” and “carries the same legal weight as the Plan document itself.” 10-A DCMR § 225.1. Further, interpreting it “broadly in conjunction with the text of the Comprehensive Plan” means, in this case, applying UNE-1.1.2. It specifies that residential infill development, of which the Project is a classic example, “should be consistent with the designations on the Future Land Use Map.” Finally, the Applicant’s reliance on 10-A DCMR § 226.1(c) to justify a significant departure from the FLUM-approved Land Use Categories for the

Property is misplaced. This provision acknowledges the Commission's authority to approve a PUD-based rezoning with some flexibility to vary the development standards of the underlying zone. But, in exercising this authority, the FLUM does not give the Commission the ability to approve a PUD-based rezoning into a classification that is well outside the typically narrow limits of what is authorized as a future zoning change by the FLUM.

27. Inspection of the FLUM makes it exceedingly apparent, notwithstanding the fact that it is not boundary or parcel-specific, that more than a majority of the Property is in the FLUM's Low Density Residential Land Use Category. The lack of greater precision is not a proper justification for ignoring what can readily be determined in relation to the FLUM for the Property.

28. The 200-Footers agree that OP's January 9, 2012 report was in error and that the Commission repeated the mistake in its Order.

29. The proposed finding misstates OP's claim that "[t]he C-2-B zone is "congruent with both the Moderate Density Commercial Land Use category and the Medium Density Commercial Land Use category." (Ex. 320, p.5; emphasis added). There is no "Moderate Density Mixed Use" or "Medium Density Mixed Use" Land Use category in the FLUM. Nor is there a "congruency" standard in District of Columbia zoning law or regulations, and it has no place in the Commission's findings. What the FLUM Land Use Categories do establish is that both the Moderate and Medium Density Commercial Land Use categories are represented by the C-2-B Zone. 10-A DCMR §§ 225.9, 225.10. This has no bearing on this Project, 6% of which is Low or Moderate Density Commercial, and 94% of which is Medium Density Residential. For details, see the 200-Footers' Proposed Order. Given that the predominant character of the

Project is Medium Density Residential, OP's claim would have no relevance even if there were some legal standard of "congruency" to be applied here.

30. As explained in response to proposed finding 29, there is no "Moderate Density Mixed Use" Land Use Category for the FLUM. The Project is, undeniably, predominately Medium Density Residential Use, and that is the use that has been extended significantly into an area designated Low Density Residential on the FLUM.

31. The Applicant's claim that the intrusion of more than half the Project into land designated on the FLUM as in the Low Density Residential Land Use Category "does not render the Project inconsistent with the FLUM" could only be true if the FLUM were to be thought of as guidance than can be flagrantly disregarded. The Commission, relying on the OP analysis, erred in Order No. 10-28 in concluding that a majority of the Property was outside the Low Density Residential Land Use Category. The Applicant's Proposed Order concedes as much. Further, the claim that this error "is not a material consideration" in relation to approval of the Project would be true only if the Commission, as it should, were to find that the Project cannot be approved whatever the precise amount of intrusion into the area that, in addition to being recommended on the FLUM for Low Density Residential use in the future, is currently developed at that level with single-family homes in the R-2 Zone. This finding also repeats the error identified in finding 30.

32. This finding also repeats the error identified in finding 30. In addition, the Commission did not place "PUD limitations on the height and density of the Project;" the Commission in Order 10-28 approved the height and density the Applicant ultimately requested. If the amount of height and density was less than allowed in the C-2-B Zone, it is best described as self-restraint by the Applicant in seeking approval of a Zone more intense than can be seen anywhere else in the Brookland area. See the 200 Footers' Proposed Order. The proper and relevant

question is whether the approved height and density are consistent with the actual FLUM recommendations for the land. As explained above, for a majority of the Property, the answer is unequivocally in the negative.

33. As explained above, both the FLUM and specific, relevant Comprehensive Plan Elements require the scale of development of the Property to be consistent with the Land Use Categories on the FLUM for the Property. This is a requirement of District of Columbia law; it cannot be disregarded on account of “competing policies.” In any event, the “competing policy” of “encouraging transit oriented mixed use growth near Metrorail stations,” is one than the Applicant has failed to prove cannot be served with a less dense and intrusive project that is consistent with the FLUM. The comments on findings 8, 11 and 14 are also applicable here.

The Generalized Policy Map

As with the Comprehensive Plan Elements, the 200-Footers respectfully refer the Commission to their more complete and comprehensive discussion of the Generalized Policy Map (“GPM”) in their Proposed Order. What follows is responsive to what the Applicant has said in its Proposed Order regarding the GPM.

36. The 200-Footers agree that the Project is in a Neighborhood Conservation Area and not part of the Land Use Change Area for the Brookland/CUA Metrorail station.

37. The fact that the GPM is not a zoning map, is not parcel-specific, and does not set forth specific development standards are all irrelevant to the reality of the role that the GPM is required to play in rezoning decisions such as this case. The Applicant acknowledges in its finding 36 that the Property is designated as a Neighborhood Conservation Area on the GPM; therefore, a generalized argument about its lack of precision is irrelevant in this case. Nor have the 200-Footers sought to rely on the GPM for specific development standards. While such a

designation is not “dispositive” about how land in a Neighborhood Conservation Area should be used, that does not alter the fact that such areas are subject to redevelopment only where the new development is “compatible with the existing scale and architectural character of the area.” 10-A DCMR § 223.5.

38. While the GPM does not directly “offer a category for redevelopment of a non-vacant residential area,” its constraints on development of vacant residential properties would, *a fortiori*, apply to already developed residential properties. The rest of this finding is an ineffectual attempt to diminish the fact, as admitted by the Applicant in finding 36, that the Property is outside the Land Use Change Area for the Brookland/CUA Metrorail Station designation on the GPM.

39. This conclusory finding of compatibility is wrong for all the reasons set forth in response to other findings on essentially the same point, as enumerated above.

40. See responses to findings 37-39. In addition, the 200 Footers note that the Applicant’s characterization of the Project as “moderate density mixed-use” is erroneous. See response to findings 29-30 above.

CONCLUSIONS OF LAW

As with the Findings of Fact, the 200-Footers respectfully refer the Commission to their Conclusions of Law in their Proposed Order. What follows is responsive to what the Applicant has recommended in its Proposed Order for Conclusions of Law.

1. The 200-Footers agree that the Commission must consider the Comprehensive Plan, including the Land Use Element and the Upper Northeast Area Element, the FLUM and the GPM, in determining whether the Project is not inconsistent with these components of the Comprehensive Plan. The 200-Footers do not agree that, when properly applied in this instance,

these policies of encouraging transit-oriented mixed-use development and preserving the residential nature of District neighborhoods necessarily must be viewed as “competing.” In this case, for example, an appropriately scaled mixed-use development on the Property could serve both the goal of providing transit-oriented development and achieving compatibility with, and preservation of, adjacent single-family homes and neighborhoods.

2. When the flawed proposed findings of the Applicant are corrected, as in the 200-Footers Proposed Order, the only defensible conclusion is that the Applicant has failed to meet its burden of proof that the project is not inconsistent with the Comprehensive Plan in all of its components.

3. When the relevant Land Use Elements of the Comprehensive Plan are all considered, including those listed in conclusion 3, and when the flawed proposed findings of the Applicant on the Land Use Element are corrected, as in the 200-Footers Proposed Order, the only defensible conclusion is that the Applicant has failed to meet its burden of proof that the project is not inconsistent with the Land Use Element of the Comprehensive Plan. See the 200-Footers Proposed Order.

4. When the relevant Northeast Area Elements of the Comprehensive Plan are all considered, including those listed in conclusion 4, and when the flawed proposed findings of the Applicant on the Northeast Area Element are corrected, as in the 200-Footers Proposed Order, the only defensible conclusion is that the Applicant has failed to meet its burden of proof that the project is not inconsistent with the Northeast Area Element of the Comprehensive Plan. See the 200-Footers Proposed Order.

5. When the flawed proposed findings regarding consistency with the FLUM are corrected, as in the 200-Footers Proposed Order, the only defensible conclusion is that the Applicant has

failed to meet its burden of proof that the project is not inconsistent with the FLUM. See the 200-Footers Proposed Order.

6. When the flawed proposed findings regarding consistency with the GPM are corrected, as in the 200-Footers Proposed Order, the only defensible conclusion is that the Applicant has failed to meet its burden of proof that the project is not inconsistent with the GPM. See the 200-Footers Proposed Order.

7. When proper, record-based findings are made on the basis of the existing record, the proper and defensible finding is that the Applicant has not met its burden of proof that the Project is not inconsistent with the Comprehensive Plan, including the Land Use Element, the Northeast Area Element, the FLUM and the GPM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David W. Brown", with a horizontal line drawn underneath it.

David W. Brown
Knopf & Brown
401 E. Jefferson Street
Suite 206
Rockville, Maryland 20850
brown@knopf-brown.com
(301) 545-6100

July 9, 2013

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-28A
Z.C. Case No. 10-28**

**Consolidated Review of Planned Unit Development
and Zoning Map Amendment for 901 Monroe Street, N.E.
(Square 3829, Lots 3, 4, 11, 12, 22 and 820)**

ORDER ON REMAND

This proceeding concerns an application submitted by 901 Monroe Street LLC (“Applicant”) for a Planned Unit Development (“PUD”) and related Zoning Map amendment in connection with the development of a property adjacent to the Brookland/CUA Metrorail station in Northeast Washington, DC (the “Project”). Parties to this proceeding, in addition to the Applicant, are Advisory Neighborhood Commission (“ANC”) 5B, the Brookland Neighborhood Citizens Association (“BNCA”), and a group of residents residing within 200 feet of the subject property (the “200-Footers”).

By Order effective June 8, 2012, the Zoning Commission for the District of Columbia (the “Commission”) approved the application subject to conditions (“Z.C. Order No. 10-28”). The 200-Footers appealed the Commission’s decision to the District of Columbia Court of Appeals. By decision dated May 16, 2013, the Court of Appeals remanded the case to the Commission for additional findings of fact and conclusions of law. *Guy Durant, et al., v. D.C. Zoning Comm’n*, ____ A.2d ____, 2013 WL 2102501 (D.C. May 16, 2013).

The pertinent portion of the Court of Appeals Opinion remanded the case back to the Commission to address or explain its resolution of certain specific claims of the 200 Footers that the Applicant had failed to demonstrate that the application was not inconsistent with the Comprehensive Plan. Accordingly, the Court required the Commission to:

- “1. Resolve the dispute regarding the FLUM designations, and determine whether the project is consistent with the Plan as a whole in light of its resolution of that issue;
2. Explain whether the proposal is consistent with the written Plan policies discussed above: UNE-1.1.1, LU-2.1.6, LU-2.1.8, LU-2.3.1, and with the portions of the UNE-2.6.1 and LU-1.3.1 omitted from its quotation of these policies;
3. Make findings regarding the GPM’s designation of the property as a Neighborhood Conservation Area, and determine whether the developer’s application is consistent with the Plan in light of that designation; and
4. Make any other necessary findings of fact and conclusions of law, in accordance with this opinion.”

On June 11, 2013, the Commission issued a Revised Procedural Order in response to the Opinion. The Order requested that the Applicant provide a proposed order on remand that complies with the directives in the Opinion by June 24, 2013, and provided the 200-Footers, BNCA and ANC 5B the opportunity to respond to the Applicant's submission by July 9, 2013.

The Commission has considered the responses filed by the Applicant, the 200-Footers and the other parties. Based on the record and the submissions filed in response to the Revised Procedural Order, and for the reasons stated below, the Commission has made some additional findings and modified the findings in Z.C. Order No. 10-28, as detailed below. Based on the revised findings set forth below, the Commission has determined that the application must be disapproved because the Applicant has failed to demonstrate that it is not inconsistent with the various components of the District of Columbia Comprehensive Plan. The Commission accordingly vacates the decision of approval contained in Z.C. Order No. 10-28 (and the associated conditions of approval). The Commission adopts the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. The project site consists of Lots 3, 4, 11, 22, and 820 in Square 3829 ("Subject Property" or "Property"). The Subject Property is split-zoned C-1 and R-2. The Subject Property includes approximately 60,000 square feet of land area. At the time of the application, the Property was located within the boundaries of then Advisory Neighborhood Commission ("ANC") 5A. Redistricting after the 2010 Census moved the Subject Property to ANC 5B (Exhibit ["Ex."] 4.)
2. On November 16, 2010, the Applicant submitted an application seeking review and approval of a consolidated PUD and related Zoning Map amendment to the C-2-B Zone District for a new multifamily apartment building with ground-floor retail. (Ex. 4.)
3. Notice of the public hearing was published in the *D.C. Register* on October 28, 2011 and was mailed to ANC 5A, and to owners of all property within 200 feet of the Property.
4. The public hearings on the application were conducted on January 19 and February 2, 2012. The hearings were conducted in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
5. On February 24, 2011, in response to requests from community stakeholders, the Applicant filed a supplemental submission and updated its application materials. (Ex. 4, 11.).
6. By memorandum dated March 4, 2011, and through testimony at the public meeting held on March 14, 2011, the Office of Planning ("OP") recommended that the Commission set down the application for public hearing on the application for a consolidated PUD and

related Zoning Map amendment to the C-2-B Zone District. OP also recommended, in the alternative, that the Commission set down the application for public hearing on the application for a consolidated PUD and related Zoning Map amendment to the C-2-A Zone District. (Ex. 12; 3/14/11 Transcript [“Tr.”] pp. 44-45.)

7. At the March 14, 2011 public meeting, the Commission requested additional information about the Future Land Use Map, its relationship with the Comprehensive Plan, the calculation of the project’s floor area ratio (“FAR”), the relationship of the new building to the existing buildings nearby, the public benefits and amenities, and shadow studies. (3/14/11 Tr., pp. 46-63.)
8. On July 5, 2011, in response to issues and requests from the Commission at the March 14th public meeting, the Applicant filed an additional supplemental submission. The additional supplemental submission included revised plans for the project and a recalculated overall density for the project. (Ex. 18.)
9. By a revised report dated July 15, 2011 and through testimony, OP recommended that the Commission set down the application for public hearing on the application for a consolidated PUD and related Zoning Map amendment to the C-2-B Zone District. OP no longer recommended setting down the application in the alternative in the C-2-A Zone District, because the FAR proposed by the Applicant is greater than allowed as PUD density in the C-2-A zone. (Ex. 20; 7/25/11 Tr., pp. 97-101.)
10. At its July 25, 2011 public meeting, the Commission set the case down for a public hearing as a contested case. The Commission adopted OP’s recommendation that the application be set down as a consolidated PUD and related Zoning Map amendment to the C-2-B Zone District.
11. On October 13, 2011, the Applicant filed a pre-hearing submission, and a public hearing was timely scheduled for January 19, 2012. On December 29, 2011, prior to the public hearing, the Applicant supplemented its application with additional information, including updated plans and a traffic impact study. (Ex. 21, 41.)
12. In addition to the Applicant, ANC 5A was automatically a party in this proceeding. ANC 5A submitted a report and resolution in support of the application. (Ex. 156.)
13. The Commission received a timely party status request in opposition from a group of residents residing within 200 feet of the Subject Property (the “200-Footers”). The Commission granted party status to the 200-Footers. (Ex. 29, 44; 1/19/12 Tr., pp. 17-19.)
14. The Commission received a timely party status request in support from the Brookland Neighborhood Civic Association (“BNCA”). The Commission granted party status to the BNCA. (Ex. 43; 1/19/12 Tr., pp. 10-16.)
15. At the public hearing, the Commission heard testimony and received a report from the Office of Planning (“OP”) in support of the application. At the Commission’s

- request, OP also filed a post-hearing supplemental report providing more information concerning the relationship among Comprehensive Plan elements. (Ex. 80, 320; 1/19/12 Tr., pp. 189-193.)
16. At the public hearing, the Commission heard testimony and received a report from the District Department of Transportation (“DDOT”) in support of the application. (Ex. 79; 1/19/12 Tr., pp. 193-196.)
 17. At the January 19, 2012 hearing, the Applicant presented evidence and testimony from Bo Menkiti, a member of the development team; David Roodberg, a member of the development team; Phil Esocoff, qualified as an expert in architecture; and Jami Milanovich, qualified as an expert in traffic engineering. (1/19/12 Tr., pp. 21-149.)
 18. At the February 2, 2012 hearing, the Applicant submitted additional information in response to issues and questions raised at the January 19th public hearing. The submission included responses to OP’s conditions of support, responses to DDOT’s recommendations, a neighborhood parking evaluation, the potential location of the Inclusionary Zoning (“IZ”) units, additional information about the proposed community amenities, and the Applicant’s Closing Statement. (Ex. 308-315.)
 19. On February 23, 2012, the Applicant submitted additional information in response to the Commission’s requests at the February 2, 2012 public hearing. The submission included information about additional community outreach, a revised and enhanced construction management agreement, a revised community amenities package, and additional architectural renderings. (Ex. 318.)
 20. On March 1, 2012, the Applicant made a motion to reopen to the record in this case in order to provide additional details regarding the proposed undergrounding of utilities for this Project. The Applicant noted that, based on further engineering design work associated with the Project, it would also underground the utilities and remove utility poles along 9th Street, N.E. between Monroe Street, N.E. and Lawrence Street, N.E. The Applicant reported the cost of this additional undergrounding of utilities to be approximately \$350,000, which the Applicant added to the value of the community amenities package. (Ex. 323, 326.)
 21. On April 2, 2012, the Applicant submitted a final and updated list of its proffered public benefits and amenities together with a list of proposed conditions to enforce each proffer. (Ex. 336.)
 22. On April 9, 2012, the 200-Footers submitted comments on the Applicant’s final list of proffers and proposed conditions. (Ex. 337.)
 23. At a public meeting held on March 12, 2012, the Commission took proposed action to approve the application.

24. At a public meeting on April 30, 2012, the Commission took final action to approve the application in Z.C. Case No. 10-28, subject to conditions, and approved Z.C. Order No. 10-28.

The Subject Property and Surrounding Area

25. The Subject Property is bounded by Monroe Street, N.E. to the north, 10th Street, N.E. to the east, Lawrence Street, N.E. to the south and 9th Street, N.E. to the west. The Subject Property includes the entire frontage along the south side of Monroe Street between 9th and 10th Streets. The Col. Brooks' Tavern restaurant, located at 901 Monroe Street, N.E., and its parking lot to the south are located on the Subject Property. The remainder of the Subject Property consists of free-standing residential buildings. (Ex. 4.)
26. The Subject Property is located in the Brookland neighborhood. The Colonel Brooks Mansion is located on the north side of the 900 block of Monroe Street, directly across Monroe Street from the Subject Property. An entrance to the Brookland/CUA Metro Station is located northwest of the Brooks Mansion. The north side of Monroe Street between 10th Street and 12th Street includes a mix of single-family residential structures of varying architectural styles and quality. The established commercial center of Brookland is located along 12th Street north and east of the Subject Property. The south side of Monroe Street from 12th Street to 10th Street includes several institutional uses, including St. Anthony's Catholic Church and school and the Luke C. Moore Academy. Lawrence Street, to the south of the Subject Property, includes single family homes on a raised hill on the south side of Lawrence Street. On the west side of 9th Street, directly across from the Subject Property are seven rowhouses. (Ex. 4.)
27. Residential properties are to the south of the Property, and institutional and residential properties are to the east and southeast. To the west directly across 9th Street are seven rowhouses, of which five are used as residences. (Ex. 296B, p.4; 2/12/12 Tr., p. 68) Slightly further to the west along Monroe Street across the bridge is the location of the new CUA / South Campus mixed-use PUD. (1/19/12 Tr., p. 37)
28. On the District of Columbia Comprehensive Plan Future Land Use Map ("FLUM"), the Subject Property has been placed in two color-coded land use categories: (1) Low-Density Residential, and (2) Mixed-Use Moderate- Density Commercial/Moderate-Density Residential.

Description of the PUD Project

29. The project is a mixed-use project with ground floor retail, residential apartments in the floors above, and underground parking. (Ex. 4, 25; 1/19/12 Tr., pp. 35-54.) The Applicant requested a PUD-related rezoning of the Subject Property to the C-2-B Zone District. (Ex. 4.)
30. The project features neighborhood-serving retail tenants on the ground floor along Monroe Street. The retail space consists of approximately 12,720 square feet, laid out to allow for five to seven retail tenants. Ceiling heights of approximately 16 feet are

provided on the ground floor along Monroe Street. The entire structure will be set-back from the property line at varying distances, most within the 9-15 foot range. The setback along Monroe Street is intended to allow for the development of a four-foot wide planting strip, a six-foot wide sidewalk, and a five- to seven-foot wide café zone for the retail tenants. (Ex. 25; 1/19/12 Tr., pp. 35-54.)

31. The residential component of the project includes 205-220 residential units located on the second through fifth levels of the structure along Monroe Street and 10th Street and on the garden through sixth levels along 9th and Lawrence Streets. The main entrance to the residential units is located on 9th Street. The residential units consist of a mix of studios, junior one bedrooms, one bedrooms, one bedrooms with den, and two bedroom units. Outdoor amenity spaces for the residents are to be provided at the garden level and on the third courtyard level, which includes a pool and recreation space. Approximately 15,151 square feet of the residential square footage (eight percent of the total amount of residential square footage in the project) is reserved as workforce affordable units for households earning up to 80% of the Area Median Income. (Ex. 25; 1/19/12 Tr., pp. 35-54.)
32. The project includes approximately 150 parking spaces and approximately 66 bicycle parking spaces. Approximately 13-37 spaces are to be made available for patrons of the retail tenants. The remaining parking spaces are to be reserved for the residential tenants and their guests. Vehicular access to the project is provided through an east-west enclosed private alley that is covered by the second story of the structure and includes retractable garage doors at the 9th and 10th Street entrances/exit. Personal vehicles enter and exit the parking structure via an entrance along 9th Street, which includes a garage door that is set back an additional 26 feet from the building's façade. The intention is to minimize its appearance and move cars off the sidewalk in order to enhance pedestrian safety. Delivery trucks access the loading docks via the east-west alley from 10th Street. Similar to the treatment of the garage door on the 9th Street side of the structure, the garage door on the 10th Street side of the structure is set back 10-12 feet from the façade of the building. (Ex. 25; 1/19/12 Tr., pp. 35-54.)
33. Along 9th Street towards Lawrence Street, the project provides entrances to the individual units directly from 9th Street and provides outside garden areas for those garden level units in the setback area. The depth of the outside areas on the garden level is approximately nine feet. The horizontal width of the outside areas along 9th Street ranges from five feet-four inches to 10 feet; and along Lawrence Street their horizontal width ranges from seven feet-four inches to 12 feet. The depth of these areas require that the adjacent residential areas be included in the calculation of the building's gross floor area. (Ex. 25; 1/19/12 Tr., pp. 35-54.)
34. The façade materials of the building include brick, stone, pre-cast elements, and pressed metal accents. All elevations of the building include the same architectural materials. In addition to the setback of the entire structure, the sixth level of the building is set back an additional five to seven feet from the building edge. This stepping back of the top level of the building allows for the creation of terraces and patios for the units on

the top story, and is intended to reduce the visual impact of the entire structure on the surrounding properties. (Ex. 25; 1/19/12 Tr., pp. 35-54.)

35. In response to concerns raised by OP, the Commission, and adjacent neighbors, the project includes features to enhance its appearance and its relationship to the single family homes adjacent to or across the street from the project. Along Lawrence Street, the project includes bays of approximately 14 feet in width, and the upper levels are pulled further back from the street edge along Lawrence Street and the alley in the Square in a series of setbacks. In addition, the areaways along Lawrence Street will range from a depth of six feet at the intersection of 9th and Lawrence Streets to 13 feet at the alley on the eastern edge of the Subject Property. At the eastern edge of the Subject Property along Lawrence Street, adjacent to the north-south public alley in the Square, the project includes a series of setbacks from the property line. These setbacks allow for the planting of trees on the Property that will help soften the visual impact of the project on the other properties located along 10th Street in this Square. The project's design also includes a series of setbacks from both the street and side lot to mediate the height differential between the adjacent townhouses on 10th Street and the project. At their lowest points, these setbacks will nearly equal the height of the nearest townhouses. In addition, the project will incorporate architectural features that recall elements found in the adjoining townhouses, such as chimney masses and small mansard roofs. (Ex 25; 1/19/12 Tr., pp. 35-54.)

Density Proposed and Flexibility Requested

36. The total gross floor area included in the project is approximately 198,480 square feet, for a total density of approximately 3.31 FAR. Because the project will include larger below-grade area ways, it is required to include 12,737 square feet of truly below-grade residential space in its FAR calculation. The height of the building at its tallest point will be approximately 60 feet—eight inches, with the top floor of the structure set back from the edge of the building at 50 feet. (Ex. 25.)
37. The Applicant requested flexibility from the strict application of the roof structure requirements in § 411.2, 411.3, and 411.5 of the Zoning Regulations. The project will have multiple roof structures, all of which are set back from the roof of the sixth level at a 1:1 ratio. Two roof structures are proposed to house the elevator overrun and the roof access stair tower, both 12 feet in height above the sixth level of the building. The Commission has the authority to grant this flexibility pursuant to § 2405.7. (Ex. 25, p. 10.)
38. The Applicant requested flexibility from the strict application of the loading requirements in § 2201.1 of the Zoning Regulations to provide a 55-foot loading berth. A delivery truck that would utilize a 55-foot loading berth would not be able to access the Property from 10th Street, given the existing roadway width of 10th Street. The Applicant believes that the proposed loading facilities (which include a 30-foot loading berth, a 400-square-foot-loading platform, and two 30-foot delivery spaces) will be able to satisfy the loading needs of this project. The Commission has the authority to grant this flexibility pursuant to § 2405.5. (Ex. 25, p. 11.)

Public Benefits and Amenities

39. The Applicant, in its written submissions and testimony before the Commission, claimed that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403:

a. *Housing and Affordable Housing*

The Project will create approximately 205-220 residential units and approximately 15,151 square feet of workforce affordable housing (eight percent of the total amount of residential square footage in the project) for households earning up to 80% of the AML. The affordable housing units will be distributed throughout the building (except for the upper two stories of the building). (Ex. 25.)

b. *Urban Design, Architecture, Landscaping, or Creation of Open Spaces*

The massing, height, and articulation of the building will create a project that provides new housing and retail opportunities for the surrounding community. The height of the project will be greater than the height of other buildings and structures in the immediate area. Nevertheless, the building's setbacks would result in less visual impact on the adjacent properties than a building which is 50 feet tall and extends all the way out to the property line. The Applicant proposes to eliminate the public utility poles and move the existing overhead public utility lines underground for the span of Monroe Street between 9th and 10th Streets and along 9th Street between Monroe and Lawrence Streets. This would enhance the streetscape and add to the visual appeal of the building. (Ex. 25.)

c. *Site Planning, and Efficient and Economical Land Uses*

The Subject Property has geographic proximity to the Brookland/CUA Metro Station. Given that part of the Subject Property is recommended for redevelopment on the Future Land Use Map, redeveloping that part of the Subject Property with a mixed-use project of housing and community-serving retail would reflect appropriate site planning and efficient and economical land use. (Ex. 25.)

d. *Effective and Safe Vehicular and Pedestrian Access*

No curb cuts are proposed for Monroe Street, and an existing curb cut on Monroe Street would be removed. The enclosed east-west private alley system would minimize vehicular-pedestrian conflicts and would allow for safe access to and from the parking and loading facilities. The project would not use the existing north-south alley in the Square which is currently utilized by the six single-family houses on 10th Street not included in the project. Approximately 66 dedicated bicycle parking spaces are proposed for the ground floor and the first below-grade level of the building. Changing and shower facilities for employees of the retail tenants are to be provided. (Ex. 25.)

The traffic and parking engineering consultant for this project prepared a Transportation Impact Study ("TIS"). (Ex. 42; 1/19/12 Tr., pp. 56-63.) The TIS makes the following conclusions:

- i. The Subject site is well-served by Metro and is located within one block of the Brookland/CUA Metro Station;
- ii. At the off-site study intersections, the number of trips generated by the proposed redevelopment is expected to account for approximately four percent or less of the total future traffic;
- iii. The existing pedestrian facilities, along with the sidewalk reconstruction and the bulb-outs planned along the Property's frontage, would adequately accommodate the anticipated pedestrian traffic from the project; and
- iv. The proposed redevelopment of the Subject Property would not have a significant impact on the traffic operations in the study area.

The Applicant proposes to abide by a transportation demand management ("TDM") program and loading management plan that includes the following components:

- i. The Applicant would provide initial residents in the building with SmarTrip cards pre-loaded with \$5. The total value for each card is to be \$10 (\$5 for the card itself and \$5 of credit);
- ii. The Applicant would coordinate with Zipcar to determine the feasibility of locating Zipcars on site. The final determination on whether and how many Zipcars are to be located at the site would be made by Zipcar;
- iii. Significant bicycle parking (66 bicycle parking spaces inside the building, with the ability to provide up to 20 bicycle parking spaces in the public space adjacent to the building) is to be provided on-site for both retail employees and residents. Bicycle parking for the retail employees is provided on the first floor. Bicycle parking for the residents is provided on the garden level;
- iv. Shower and changing facilities are provided on site for employees who wish to walk, jog, or bike to work;
- v. A business center is provided in the residential building for residents who telecommute;
- vi. The Applicant would designate a Loading Coordinator for the site;
- vii. All tenants would be required to use the loading dock for move-in/move-out activities, except when trucks greater than 45 feet are required;

- viii. All tenants would be required to notify Loading Coordinator of move-in/move-out dates;
- ix. When trucks greater than 45 feet are required for tenant move-in/move-out, the Loading Coordinator would assist tenants in obtaining proper permits from DDOT;
- x. All retail tenants and vendors would be required to use the loading dock for all deliveries;
- xi. The Applicant would prohibit vendors to retail uses in the project from making deliveries in trucks larger than 45 feet;
- xii. No truck idling would be permitted; and
- xiii. The Applicant would include a provision in all leases (residential and commercial) that the north/south alley in Square 3829 is not to be used by residents and tenants of the project for unloading, loading, or as the primary entrance to the building.

e. *Environmental Benefits*

The project has been designed to be able to achieve LEED Certification. The Applicant is unsure whether it would ultimately apply for the actual certification from the United States Green Building Council ("USGBC"), but the structure is to be designed in a manner that would allow for such certification. The Applicant claims that no adverse environmental impact would result from the construction of this project. The project's proposed stormwater management and erosion control plans are intended to minimize impact on the adjacent properties and existing stormwater systems. The requisite erosion control procedures stipulated by the District would be implemented during construction of the project. (Ex. 25.)

f. *Uses of Special Value*

Representatives of the Applicant engaged in outreach to the neighboring community. The Applicant and its design team held over 35 meetings and presentations with community organizations and individuals. The Applicant met with ANC 5A and individual ANC 5A Commissioners. The Applicant excluded the 200-Footers from most of these meetings. As a result, the project's community amenities and public benefits reflect the selective outreach of the Applicant rather than the recommendations and concerns of residents most directly impacted by the project. (Exs. 25, 41, 296, 296A, 296B, 298 (pp.2-4), 318)

The Applicant's February 23, 2012 and March 1, 2012 submissions included a revised and enhanced community amenities package (Ex. 318, 326). As updated in its April 2, 2012 submission (Ex. 336), the package includes the following:

- i. The cost of undergrounding the utility lines along the south side of Monroe Street between 9th Street and 10th Street, and along the east side of 9th Street between Monroe Street and Lawrence Street;
- ii. Replacement of the sidewalk, curb, and gutters around the entire block that includes the project, and re-grade and repave the alley in Square 3829 that will only be utilized by the adjacent 10th Street property owners;
- iii. The provision to each of the six adjacent 10th Street property owners with \$5,000 worth of in-kind labor and materials (for a total expense to the Applicant of \$30,000) which can be used for hardscape and/or landscape improvements on their property. The Applicant will be responsible for performing this work on behalf of each 10th Street property owner;
- iv. The installation of eight security cameras on the exterior of the building to monitor activity on the sidewalks adjacent to the property, as well as the entire block bound by Monroe, 9th, Lawrence and 10th Streets. It is intended that these cameras will be able to monitor activity on the block that includes Square 3829. Footage from these cameras will be made available to the Metropolitan Police Department, if requested;
- v. The following financial contributions within the specified period:
 - (a) \$25,000 to the Washington Area Community Investment Fund to be used for a 12th Street, N.E. Façade Improvement Program. The Applicant would make this payment prior to the issuance of the building permit for the project;
 - (b) \$25,000 to Byte Back for the purchase of 26 desktop computers for their computer lab. The Applicant would make this payment prior to the issuance of the building permit for the project;
 - (c) \$50,000 to The Community Foundation for the National Capital Region to fund and administer no-interest loans for small businesses that are located within the Brookland Community. The Applicant would make this payment prior to the issuance of the building permit for the project; and
 - (d) \$25,000 to Dance Place to be used for improvements to the new dance studio in Dance Place's main theater building and its new dance studio in the Brookland Artspace Lofts. The Applicant would make this payment prior to the issuance of the building permit for the project;

- v. Payment for and construction of \$25,000 worth of enhancements to the playground equipment and open spaces at the Turkey Thicket Recreation Center, located at 1100 Michigan Avenue, N.E. The Applicant would provide evidence that this work was completed prior to the issuance of a certificate of occupancy for the residential portion of the project, subject to the approval of the Department of Parks and Recreation (“DPR”);
- vi. The Applicant would continue to work with the Greater Brookland Business Association (“GBBA”) to identify potential business opportunities for Brookland businesses throughout the life of the project. The Applicant would adhere to the following procedures in order to cultivate these business opportunities:
 - (a) The Applicant would semi-annually obtain from the GBBA a list of products and services offered by its members, including a notation for each business as to whether it is a CBE;
 - (b) The Applicant would offer Brookland businesses an opportunity to bid on products and service offerings prior to selecting a vendor; and
 - (c) The Applicant and GBBA would meet quarterly to review business opportunities and the selection of Brookland businesses.

In addition, the Applicant submitted a revised construction management agreement (“CMA”) resulting from negotiations with the 200-Footers following the February 2, 2012 hearing. The CMA is a compromise between the Applicant and the 200-Footers even though some provisions critically desired by the 200-Footers (e.g., enforcement) were not included. (Ex. 318, Ex. 318B.)

g. Revenue for the District

The Applicant has presented an “Economic Impact Analysis” which it uses to claim that the construction and operation of this project will result in a significant positive economic impact for the Brookland neighborhood and the entire District of Columbia, especially compared to the current uses on the property. The Applicant projects that this project will result in one-time economic benefits of \$3,024,000 to the City, with additional net annual economic benefits to the City of approximately \$1,859,585. These projections are far more precise than is warranted by the data and assumptions on which they are based, which are, in turn, largely unexplained and speculative. In any event, it is reasonably foreseeable that the project would increase the number of taxpaying residents of the District of Columbia and otherwise increase tax revenues for the City. No data have been provided on the increased cost to the City of providing public services to these new residents. Nor have any data been presented on the comparative increase in revenues to the City were the project to be approved and

built at the lower height and lesser density initially proposed by OP (C-2-A) and supported by the 200-Footers and BNCA. (Ex. 25H.)

h. *First Source Employment Program and Use of Local Businesses*

The Applicant proposes to voluntarily enter into an agreement to participate in the Department of Employment Services (“DOES”) First Source Employment Program to promote and encourage the hiring of District of Columbia residents. Local businesses are a key component of the project’s development team. The Applicant proposes to work with the GBBA to identify potential business opportunities for Brookland businesses throughout the life of the project. The Applicant proposes to adhere to specific procedures in order to cultivate these business opportunities. (Ex. 25.)

Government Agency Reports and District Government

40. By report dated January 9, 2012, OP recommended, subject to further clarification from the Applicant, that the proposed PUD and related Zoning Map amendment should be approved. In its testimony at the public hearing, OP reiterated its recommendation. (Ex. 80; 1/19/12 Tr., pp. 190-193.)
41. OP’s requests for further clarification from the Applicant concerned details of the proposed community benefits grants; clarification of the proposed contribution to the Turkey Thicket Recreation Center; the specific LEED elements of the project totaling 43 points; the amount of fare to be included on each residential unit’s one-time complimentary SmarTrip card; and procedures for discouraging curb-side loading, particularly for trucks larger than 45 feet. (Ex. 80.)
42. OP determined that the project and related Zoning Map amendment would not be inconsistent with the Comprehensive Plan. In its report, OP stated, “The [Future Land Use Map and the Generalized Policy Map] do not, in and of themselves, determine whether an application is not inconsistent with the Comprehensive Plan. A project, including benefit proffers for a PUD, must be evaluated within the context of the full document to determine whether it would be not inconsistent with the Comprehensive Plan.” Thus, OP concluded, “OP’s analysis indicates that the proposed project would strike an appropriate balance among several policies, including those addressing transit oriented development, commercial revitalization and neighborhood conservation. Given the location and the proposed design, height and FAR restrictions and uses of the PUD, the project and the associated zoning request would not be inconsistent with the Comprehensive Plan.” (Ex. 80, p. 5.)
43. OP further determined that the project and related Zoning Map amendment would not be inconsistent with the Small Area Plan (SAP) because it advances several of the SAP’s goals and policies. Also, OP determined that the project’s public benefits and amenities would be consistent with the SAP’s recommendations. (Ex. 80, pp. 10-13.)
44. In its supplemental report, dated February 23, 2012, OP provided additional analysis concerning the relationship among Comprehensive Plan components and in

support of the project's consistency with the Comprehensive Plan. The report explained how the Comprehensive Plan includes guidance on how its components are to be used, including the Future Land Use Map, the Generalized Policy Map, the Small Area Plan, the citywide elements, and the area elements. The report concluded that all components are to be considered and balanced together, with greater emphasis placed on certain aspects. With respect to interpreting the maps, OP concluded:

The Maps do not, in and of themselves, determine whether an application or a particular zoning designation is not inconsistent with the Comprehensive Plan. They are to be interpreted in conjunction with other written elements and an adopted Small Area Plan. Although several zone districts may be appropriate for a particular land use category, it should not be assumed that the densest district or the maximum permitted density of a zone is appropriate for a particular land use designation. (Ex. 320, p. 2.)

With respect to the citywide and area elements, OP concluded:

While there is overlap among the elements and shifting emphasis among policies from one element to another, PUD proposals should be guided by the Citywide elements and its accompanying maps, the relevant Areawide Element, and an adopted Small Area Plan. Among the written elements, the Land Use element is to be given greater weight than other elements, because it is intended to integrate the policies of the other elements. (Ex. 320, pp. 2-3.)

OP's report further stated, "Determining the type of development appropriate for the applicant's site must involve a balancing of this map with the Generalized Future Land Use Map, the written elements—particularly the Land Use element—as well as additional guidance from the SAP." (Ex. 320, p. 4.) OP's analysis of the PUD project and related Zoning Map amendment, using the guidance from the Comprehensive Plan and the SAP, affirmed its position that that the project is not inconsistent with the Comprehensive Plan, that the PUD-related C-2-B Zoning Map amendment is appropriate for the site, and that the project fulfills many goals and policies of both the Comprehensive Plan and the SAP. (Ex. 320.)

45. By its report dated January 9, 2012, DDOT recommended approval of the PUD and related Zoning Map amendment, with recommendations. DDOT stated that it "has worked with the Applicant on a number of recommendations and the Applicant has responded affirmatively to most of them." (Ex. 79, p. 2.) Further, DDOT stated that it believes many residents, workers, and visitors will use public transit as their primary mode of transportation because of the numerous transit options in the immediate vicinity. DDOT recommended that the Applicant provide the necessary crash data to support the safety aspects of the surrounding intersections in addition to what mitigations are being installed for the intersection approaches that will see increased delay in the future. Finally, DDOT suggests that the Applicant follow the provided options and employ some form of performance monitoring. (Ex. 79.)

ANC 5A Report

46. On January 11, 2012, ANC 5A submitted a letter in support of the application. The letter stated that, on January 4, 2012, the ANC voted (6-5-1) to approve a motion in support of the PUD and related Zoning Map amendment application. Further, the report stated, "ANC 5A concludes that the Applicant's PUD project and proposed Zoning Map Amendment to the C-2-B Zone District satisfies the Zoning Regulations standards for PUD approval outlined in 11 DCMR Chapter 24, and is consistent with the Brookland/CUA Metro Station Small Area Plan and the Comprehensive Plan. ANC 5A concluded that the mixed- use project will create an overall benefit to the neighborhood by creating new residential opportunities near the Brookland Metro Station, new retail stores along Monroe Street east of the train tracks, and will help enhance security in the area by having people live along 9th Street between Monroe and Lawrence Streets (and have direct entrances to ground floor units on 9th Street)." No one testified on behalf of the ANC at the public hearing. (Ex. 156.) As referenced in the testimony of three opponents (Mrs. Kahlow, ANC 5A Commissioner Steptoe, and Philip Blair), the ANC's January 4, 2012 public meeting did not allow a presentation of the full facts for informed voting. In fact, some of the public were not even allowed to speak. As a consequence, the ANC was not presented the legal "inconsistency" issues for consideration prior to voting by the Commissioners. (2/2/12 Tr., pp. 84, 92, 152).

Parties in Support

47. BNCA testified as a party in support of the application. Caroline Petti testified on behalf of the BNCA. Ms. Petti testified that BNCA held two votes on the application. She stated that the first vote, held on September 13, 2011, was against the C-2-B map amendment and in favor of a C-2-A map amendment. She stated that the second vote, held on December 13, 2011, was in favor of the proposed project. (1/19/12 Tr., pp. 240-251.)
48. At the request of the Commission, BNCA, through a letter dated February 23, 2012, submitted email correspondence that reflected the two votes. (Ex. 319.) In an email dated September 14, 2011, Ms. Petti reported on the outcome of the vote on the "application for a re-zoning of the property". According to the email, the BNCA first rejected "BNCA supports the C-2-B zoning change" by a vote of 8 to 12 and then voted to approve "BNCA supports the C-2-A zoning change" by a vote of 17 to 1, with one abstention.
49. In a second email, reporting on the December 13, 2011 BNCA meeting, Ms. Petti reported on the outcome of the vote on the "proposed Colonel Brooks project" as follows:

BNCA takes the following position on 901 Monroe Street, LLC's proposed Colonel Brooks project:

51 Support

49 Oppose.

Testimony was received at the Commission on this meeting from attendees regarding their understanding of this vote. (1/19/12 Tr., pp. 275-332). Such testimony, however, does not resolve whether the vote was in favor of C-2-B rezoning of the Subject Property.

50. Ms. Petti further testified that BNCA voted to support a C-2-A map amendment, instead of the proposed C-2-B, because C-2-A's lower height and lower density is more in scale with the surrounding neighborhood. BNCA felt that:
- a. C-2-B sets an unacceptable precedent for future Brookland development east of the tracks;
 - b. C-2-B is more than is needed to be a profitable project, C-2-A would be possible if minor modifications were made to reduce the project's density;
 - c. C-2-A is preferred by residents adjacent to the proposed project (i.e., "200- footers") and their views should be given great consideration; and
 - d. C-2-B is contrary to the Brookland Small Area Plan. (1/19/12 Tr., pp. 244-245.)
51. Ms. Petti testified that BNCA supported the project because of the new services and amenities; community-driven retail; smart growth; increased foot traffic that would result; more activity to deter crime; the exemplary architecture; and the quality of the amenities package. (1/19/12 Tr., pp. 242-243.) In response to cross-examination by Mrs. Kahlow, Ms. Petti testified that BNCA only represented two 200-Footer addresses not in the 200-Footers Group. Both are businesses, not residences. (1/19/12 Tr., pp. 242-243, 266; 2/2/12 Tr. pp. 226-227).
52. In response to a Commissioner's question, Ms. Petti indicated that, based upon the feedback she has since received, she did not believe that everyone understood that that December vote was exclusive of the zoning issue and that it did not supersede the vote that was taken in September. (1/19/12 Tr., p. 256.)
53. On March 1, 2012, BNCA submitted its response to the Applicant's post hearing submission of February 23rd. (Ex. 325.) The purpose of the response was to clarify the role played by BNCA's representatives during post-hearing meetings described in the Applicant's submission and in discussing possible alternatives to the community amenities package.
54. On March 6, 2012, BNCA submitted a supplemental motion to reopen the record to correct what it alleged were "inadvertent" mischaracterizations of its position made in the Applicant's proposed findings of facts. (Ex. 327.) The Commission indicated it would attempt to resolve the issues raised, but finds the record evidence inconclusive

regarding whether BNCA's support for the project as a C-2-A PUD rezoning extends to the C-2-B rezoning that was set down for hearing.

Persons in Support

55. At the public hearing, 23 persons testified in support of the application and related C-2-B Zoning Map amendment. Supporters included members of the community. The only community members residing within 200 feet of the Property who supported the project were those whose homes were being bought for teardown purposes on land within the Subject Property. (1/19/12 Tr., pp. 337-38 & 341.) Supporters cited many reasons for their support of the application, including: architectural quality; superior public amenities; consistency with character of the neighborhood; enhancement of the streetscape and public realm; improved safety; improved neighborhood retail; influx of residents to the area; appropriateness of more density near a Metro station; benefits to adjacent homeowners; important precedent for good development that the project will set; the necessity of more density in Brookland; and the exemplary development team based in the neighborhood. One supporter stated that the amenities package would be a benefit and compensation to the neighborhood for the requested zoning relief and that the amenities package directly resulted from discussion with the community. Many of those testifying in support also stated that, having participated in the Brookland Small Area Plan process, they believed the project would be consistent with the SAP and that height and density would be appropriate. Further, many supporters noted the commitment of the Applicant to the neighborhood and the effort by the Applicant to reach out to the community and to include the community in planning for the project and the amenities package. (1/19/12 Tr., pp. 275-332; 2/2/12 Tr., pp. 12-52.)
56. The Commission received 120 letters of support for the project. The letters expressed support of the project based on the attractive and high quality design; public amenities package; the streetscape and infrastructure improvements; the sensitive design that evolved in response to community concerns; the openness and responsiveness of the Applicant; new retail; benefits to the community; increased foot traffic; enhancement of the commercial corridor from the presence of new residents; increase in tax revenue for the District; the appropriateness of the project's design for the neighborhood; the appropriateness of the site for transit oriented development; the commitment of the development team to the neighborhood; consistency with the SAP and the Comprehensive Plan; the appropriateness and importance of higher density in this location; the design accommodation for height and density by stepping back the building near adjacent houses; the Applicant's active solicitation of community input; improved safety; and connection to the new development to the west. The record reflects a January 12, 2012 submission (i.e., before the January 19th hearing) by Mrs. Kahlow in which she provided an analysis of the letters supporting the project, detailing various flaws in them (Exs. 48-78; Exs. 81-155; Ex. 193.)

Parties in Opposition

57. Barbara Kahlow testified in opposition on behalf of the 200-Footers. She testified about: the historical and current zoning of the site; the differences between the maximums (e.g.,

height, density, and lot occupancy) allowable under current zoning and the proposed upzoning options; that the project and C-2-B related map amendment would be legally “inconsistent,” including with the Comprehensive Plan Future Land Use Map, with specific textual protections in the Comprehensive Plan, and with specific provisions in the Brookland/CUA Metro Station Small Area Plan; the project’s adverse effects, including reduced air and light, increased traffic on 9th and 10th Streets and reductions in nearby levels of service, disruption of traffic from on-street loading for trucks larger than 45 feet, reduced on-street parking, increased crime, and damage to adjacent homes from construction activity. Mrs. Kahlow also testified that the amenities package is insufficient and did not incorporate requests from the 200-Footers. She also claimed that the amenities package violated the Comprehensive Plan Implementation Element, i.e., IM-1.1.8, in that only a small amount of the proffered public amenities would directly benefit the adversely impacted 200-Footers. (Ex. 324, proposed finding 23). Further, Mrs. Kahlow testified that the construction management agreement was insufficient for the 200-Footers and that the project would be a *de facto* “expansion of a campus plan” since she was concerned that Catholic University students will be attracted to the new small residential units. Finally, Mrs. Kahlow testified that the ANC and BNCA votes in support do not reflect the concerns of the 200-Footers. (Ex. 296, 296A, 296B; 2/2/12 Tr., pp. 53-86).

58. Carolyn Steptoe, ANC 5A07 Commissioner, testified in opposition on behalf of the 200-Footers. Ms. Steptoe testified that the 200-Footers were not included in the ANC discussions regarding community amenities and that they were not invited to certain other community meetings as well. Ms. Steptoe also testified that the community is divided and that many in the neighborhood oppose the project, including some of the members of the ANC, particularly with regard to the C-2-B related map amendment. Finally, Ms. Steptoe requested additional information concerning the Applicant’s economic analysis and requested that a fiscal analysis of the project be conducted. (Ex. 298; 2/2/12 Tr., pp. 86-94.)
59. Guy Durant, a resident owner adjacent to the Property, testified in opposition on behalf of the 200-Footers. Mr. Durant testified that only a project with a C-2-A related amendment should be considered and that a C-2-A-conforming version of the project should be produced, particularly with respect to lot occupancy. Also, Mr. Durant testified that the Applicant should produce more amenities and should produce a more substantial construction management agreement with more protections for the adjacent neighbors. Further, Mr. Durant testified that other objectionable impacts will result from the project, including cell tower interference; transient residents since the units will be rentals; and shadows. Mr. Durant requested that the Applicant meet with the 200-Footers to discuss a construction management agreement. (Ex. 297; 2/2/12, Tr., pp. 117-124.)
60. Richard Houghton, a resident owner within 200 feet of the Property, testified in opposition on behalf of the 200-Footers. Mr. Houghton is an architect. His testimony summarized a 13-page report he submitted on the project. (Ex. 299). Mr. Houghton provided detailed information on the project’s footprint, façade, height, actual setbacks

and related elements in order to evaluate the project's compatibility with adjacent properties and the fabric of the neighborhood. The Commission credits the data supplied by Mr. Houghton, as it was not materially contradicted by the Applicant or any party supporting the application.

a. *Setbacks* - The proposed building is not uniformly set back 15 feet from all property lines, as the Applicant claimed. Along 9th Street, 60% of the building façade is set back only 10 feet. Along Lawrence Street, two-thirds of the façade is set back 9 feet 4 inches and the remainder 14 feet. Along 10th Street, two-thirds of the façade is set back 8 feet 4 inches and the remainder 13 feet 4 inches. Along Monroe Street, the setback is 11 feet for 66% - 80% of the façade, depending on whether storefront bays are counted. The remainder is set back 16 feet. These data are summarized in Table 1 of Mr. Houghton's report and graphically displayed in his Figure 3. (Ex. 299.)

b. *Elevations/Compatibility – 9th Street* – Mr. Houghton also provided data on the street-level elevations of the proposed building in relation to the setbacks he described. The 9th Street façade is block-long, or 278 feet, 8 inches, with six floors above grade. Mr. Houghton noted that the Applicant's shadow studies showed that residents living across 9th Street from the building would be deprived on sunlight on the first and second floors in the spring and fall. He also noted that along 9th Street, below grade space is to be carved out between the building façade and the property line for apartments below street grade, creating a moat-like restricted appearance and pedestrian experience.

c. *Elevations/Compatibility – Lawrence Street* - Along Lawrence Street, the building has a 124 feet 4 inch façade with seven floors of habitable space confronting the single-family residences across the street. Lawrence Street also has the same below grade carve out of space as is proposed along 9th Street. Looking at the scale and the architectural elements along Lawrence Street, Mr. Houghton disagrees with the Applicant's claim that the design "reflects" these single-family homes.

d. *Elevations/Compatibility – 10th Street* - Along 10th Street, the building façade is 128 feet 8 inches with six floors facing the properties across the street. On the same side of 10th Street as the project, i.e., in Square 3829, the building will sit in front of the established line of front porches of the rowhouses that are not included in the project, an outcome he concludes is detrimental to the utility of those existing porches from both an individual homeowner and community perspective. Mr. Houghton also noted the failure of the Applicant to submit a Winter Solstice shadow study for the impact of the building on the immediately adjacent rowhouses in Square 3829 at the time of year when loss of sunlight there would have the greatest impact.

e. *Building Height* - Mr. Houghton also evaluated the Applicant's claim that due to topography considerations, the proposed building height is commensurate with other buildings along Monroe Street. He compared building heights on a common baseline to conclude that the building height significantly exceeds the height of the various historic, institutional structures and landmarks in Brookland that are place finders that

appropriately should have visual dominance. These buildings are St. Anthony's Church, the Luke C. Moore Academy, and the Masonic Hall Building. He concluded from this that the project does not enhance or even relate to the historic fabric of Brookland.

f. *Future Development* – Mr. Houghton also took issue with the Applicant's claim that the project was the only development opportunity of significant size along Monroe Street between the train tracks and 12th Street that could achieve the SAP's goals. He identified specific properties that were potential redevelopment candidates, and noted the importance that the height and density of the redevelopment of the Subject Property not set an inappropriate precedent for the rest of Brookland.

61. On March 1, 2012, the 200-Footers submitted their response to the Applicant's post-hearing submission of February 23rd. (Ex. 324.) The 200-Footers again expressed their view that the public benefits were inadequate and also inconsistent with "the Commission's current policy not to accept Applicant checks to non-profit organizations instead of Applicant purchased/supplied hard amenities (e.g., trees, benches, equipment)." The group also questioned the propriety of the contribution to Dance Place asserting that a member of the developer's team is on the Dance Place Board of Directors and the son of another has a position there.
62. The response also expressed concern that the Department of Parks and Recreation might not accept the proposed improvements to the Turkey Thicket Recreation Comer. and whether Byte Back might become ineligible to receive its proposed contribution should it move beyond the radius for off-site benefits set forth in §2403.13 (b). Along those same lines, the 200-Footers stated that the location limits for the recipients of the no-interest small business loan is based upon the current boundary of ANC 5A but that the project would be in ANC 5B after redistricting is effective.

Persons in Opposition

63. At the public hearing, 10 people testified in opposition to the project. Reasons cited for opposition to the project included: concern about rezoning to C-2-B and possible precedent; preference for rezoning to C-2-A; traffic congestion; decrease in available light; lack of community input; not characteristic of the neighborhood; too much height and density for neighborhood; not consistent with the SAP; and insufficient amenities. Carole Jacobs noted that the allowable heights are the single factor the SAP used to differentiate between Monroe Street development west of the tracks and east of the tracks. (2/2/12 Tr., pp. 143-183.)
64. The Commission received 14 letters in opposition to the project. Opponents cited many reasons for their opposition to the project, including the following: the project is out of scale with the neighborhood; the project is not consistent with the SAP; the project jeopardizes the scale of 12th Street; the change to the character of the neighborhood that will result from the project; reduced light and air; increased pollution; increased traffic congestion; damage to adjacent houses during construction; increased property taxes; insufficient assessment of traffic impacts; and the unacceptable

precedent that the C-2-B zone would set. (Ex. 26, 32, 47, 157, 215, 246, 247, 252, 254, 255, 256, 258, 267, 287.)

Comparison of the Rezoning Request with Existing Zoning of the Property

65. The zoning on the Subject Property, as of the time of the requested Zoning Map amendment to C-2-B is R-2 for 62.5% of the Subject Property. (Ex. 4 (ex. I thereto); Ex. 25A.) The remainder is C-1 zoned, where Colonel Brooks Tavern is located. The frontage on Monroe Street is part R-2 and part C-1.
66. The R-2 and C-1 Zoning of the Subject Property limits development as follows: R-2: 40-foot building height; 3 stories; 40% lot occupancy. C-1: 40 foot building height; 3 stories, 1.0 FAR and 60% lot occupancy. In addition the maximum density for a C-2-A PUD is an FAR of 3.0 with 60% lot occupancy, whereas for a C-2-B PUD, the maximum density is an FAR of 6.0 with 80% lot occupancy. The Applicant has requested a 3.31 FAR and 75% lot occupancy.
67. The project is proposed to be six or six and one-half stories tall, with a maximum height of 60'8". By contrast, existing zoning would limit building height to 3 stories and 40'. Especially in relation to building heights of adjacent or confronting properties along much of 9th and 10th Streets, the Applicant proposes a substantial (53%) increase in building height.
68. In terms of density, the 40% lot occupancy maximum in the R-2 zone and the 60% maximum in the C-1 Zone coupled with the 1.0 FAR limitation in the C-1 zone, effectively limit the density of development under existing zoning to approximately 1.0 FAR. The requested 3.31 FAR would be a 231% increase in density over by-right development. In addition, the requested lot occupancy of 75% is a 25% increase over that which would be allowed under existing zoning for the C-1 portion of the Property, and an 87.5% increase over that which would be allowed on the majority R-2 portion of the Property.
69. No other property in the Brookland area east of the railroad tracks is zoned as high as C-2-B. The highest zone, C-2-A, is located solely in the 12th Street commercial corridor. The remaining zones in Brookland east of the tracks are R-1-B, R-2, C-1 and C-M-1, all of which like the R-2 and C-1 Zones, allow a maximum height of 40 feet.
70. On March 3, 1989, the Zoning Commission approved an upzoning request from R-2 to C-1 for only three of five lots in Square 3829, opining that "The rezoning of lots 5 and 12 in Square 3829 is inappropriate, would result in commercial encroachment next to lots that are primarily residential in character, and would not be beneficial to the surrounding neighborhood." (ZC Order No. 599, p. 4.) (Ex. 296). The Applicant has not explained why the upzoning of the R-2 properties within the application should be deemed appropriate today when upzoning to a less intense commercial zone was not deemed appropriate in 1989.

Brookland/CUA Metro Station Small Area Plan

71. The Property is located in the Monroe Street Sub-Area of the Brookland/CUA Metro Station Area Small Area Plan (“SAP”). The Applicant claims that the project fully achieves the goals outlined in the Small Area Plan’s Guiding Principles and Framework Plan for the Monroe Street Sub-Area. The Guiding Principles for the Monroe Street Sub-Area (See SAP, pp. 3, 6, 39, 40, 46.) include:
- a. *Land Use and Neighborhood Character* - “Monroe Street is envisioned as a tree-lined mixed-use street, with neighborhood-serving retail, restaurants, arts and cultural uses on the ground floor, and residential above”;
 - b. *Economic Development and Neighborhood Amenities* - “The Small Area Plan proposes new mixed-use and residential development to bring people to the neighborhood, and to provide needed neighborhood retail, amenities and services”;
 - c. *Transportation, Connectivity, Walkability* - “The Small Area Plan proposes strategies to create better and more efficient pedestrian and vehicular connectivity and linkages to neighborhood destinations. Reestablishing the fabric and grid of streets and blocks through street extensions and realignments wherever possible will reconnect the neighborhood by allowing for better circulation around the neighborhood and better pedestrian connectivity”;
 - d. *Green Space, Open Space and Environment* - “New public spaces, open spaces, and civic plazas are envisioned for the Metro Station area and along Monroe Street”; and
 - e. *Development Areas* - The Small Area Plan’s Framework Plan for the Monroe Street Sub-Area calls for: “Mixed-use development with community-serving retail, residential, cultural uses and public spaces along Monroe Street from Michigan Avenue to 12th Street to connect Brookland from west to east.” (See Small Area Plan, p. 46.) The SAP identifies three specific sites for development. These do not include the Subject Property. The three sites are summarized in the SAP Executive Summary on p. 5 paragraph #12 (the Metro site), p. 6 paragraph #6 (west of the railroad tracks), and p. 8 paragraph #7 (north of Michigan Avenue).
72. The Commission agrees with the Applicant’s statements that ground floor neighborhood-serving retail uses, with residential uses above, would help create the “Main Street” that the SAP envisions for Monroe Street. In addition, the proposed treatment of the streetscape along Monroe Street (with dedicated areas for tree planting, an enlarged sidewalk due to the setback of the entire building, and a café zone) is consistent with the Green Space, Open Space and Environment Guiding Principle enumerated in the SAP.
73. This Project would also support the SAP’s Guiding Principles related to Transportation, Connectivity, and Walkability. The project would provide parking

spaces at a ratio of approximately 0.6 parking spaces per residential unit. Also, the project would provide a significant amount of bicycle parking spaces for both residents and retail employees in the building. These policies are also furthered by the proposal to include shower facilities for employees who work in the retail spaces along Monroe Street.

74. In certain respects, the density of the project is not inconsistent with the outlines provided in the Monroe Street Sub-Area in the SAP. The 205-220 units take up a large part of the 750-900 proposed dwelling units proposed for all of Monroe Street between Michigan Avenue and 12th Street. The 12,720 square feet of retail in the project takes up a much smaller fraction of the 80,000-100,000 square feet of retail proposed for Monroe Street between Michigan Avenue and 12th Street envisioned in the SAP. The project will include 150 parking spaces, which is within the guidelines noted in the SAP, which anticipates 650-850 parking spaces in the Monroe Street Sub-Area.
75. Along Monroe Street east of the train tracks, the SAP limits development approval by the Commission to a maximum height of 50 feet when done with discretionary PUD approval. A building height above 50 feet on the Subject Property is inconsistent with this limitation. The Applicant proposes using setbacks above 50 feet and “urban design techniques,” including setting the entire building back from the property line and the additional setback at the sixth level (at a building height of approximately 50 feet), to justify exceeding the SAP height limit by over 10 feet. The Applicant claims that the visual impact of the building with the setbacks of the entire building and again at the sixth level will be less than or consistent with the visual impacts that would occur if a 50-foot high building were constructed on the property without setbacks along Monroe, 10th, and Lawrence Streets. The Applicant also claims that the building’s development area above 50 feet will be roughly equivalent to the development area that could be achieved on the Property if no setbacks were provided and the building had a maximum height of 50 feet.

Comprehensive Plan – Development in Proximity to Brookland/CUA Metro Station

76. The project’s geographic proximity to the Brookland/CUA Metro Station is a significant factor in its formation. This implicates several interrelated elements of the Comprehensive Plan, as follows:
 - a. The Land Use Element of the Comprehensive Plan provides:

The District’s Metrorail stations include 15 stations within the Central Employment Area and 25 “neighborhood” stations (see Map 3.5). Looking forward, certain principles should be applied in the management of land around all of the District’s neighborhood stations. These include: A preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference for housing above ground floor retail uses; A preference for diverse housing types, including both market-rate and affordable units and housing for seniors and others with mobility

impairments; A priority on attractive, pedestrian-friendly design and a de-emphasis on auto-oriented uses and surface parking; Provision of well-designed, well-programmed, and well-maintained public open spaces; A “stepping down” of densities with distance away from each station, protecting lower density uses in the vicinity; Convenient and comfortable connections to the bus system, thereby expanding access to the stations and increasing Metro's ability to serve all parts of the city; and A high level of pedestrian and bicycle connectivity between the stations and the neighborhoods around them.

(10-A DCMR § 306.4 (LU-1.3))

- b. The Land Use Element of the Comprehensive Plan also provides:

Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide. This policy should not be interpreted to outweigh other land use policies which call for neighborhood conservation. Each Metro station area is unique and must be treated as such in planning and development decisions. The Future Land Use Map expresses the desired intensity and mix of uses around each station, and the Area Elements (and in some cases Small Area Plans) provide more detailed direction for each station area.

(10-A DCMR § 306.10 (LU-1.3.1))

- c. The Land Use Element of the Comprehensive Plan also provides:

Ensure that development adjacent to Metrorail stations is planned and designed to respect the character, scale, and integrity of adjacent neighborhoods. For stations that are located within or close to low density areas, building heights should “step down” as needed to avoid dramatic contrasts in height and scale between the station area and nearby residential streets and yards.

(10-A DCMR § 306.14 (LU-1.3.5))

- d. The Upper Northeast Area Element of the Comprehensive Plan provides:

Capitalize on the presence of the Metro stations at Rhode Island Avenue, Brookland/CUA, and Fort Totten, to provide new transit-oriented housing, community services, and jobs. New development around each of these

three stations is strongly supported. The District will coordinate with WMATA to ensure that the design, density, and type of housing or other proposed development at these stations is compatible with surrounding neighborhoods; respects community concerns and feedback; serves a variety of household incomes; and mitigates impacts on parking, traffic, and public services. Development shall comply with other provisions of the Comprehensive Plan regarding the compatibility of new land uses with established development, the provision of appropriate open space, and mitigation of impacts on traffic, parking, and public services.

(10-A DCMR § 2408.4 (UNE-1.1.3)).

e. The Upper Northeast Area Element of the Comprehensive Plan provides:

Encourage moderate-density mixed use development on vacant and underutilized property in the vicinity of the Brookland/CUA Metro station, including the parking lot east of the station. Special care should be taken to protect the existing low-scale residential uses along and east of 10th Street NE, retain the number of bus bays at the station, and develop strategies to deal with overflow parking and cut-through traffic in the station vicinity.

(10-A DCMR § 2416.3 (UNE-2.6.1))

77. The foregoing Comprehensive Plan Elements must all be taken into account, and harmonized to the maximum practicable extent, in considering the proximity of the project to the Brookland/CUA Metro Station. Under IM-1.3.3, the Commission is instructed to be guided by these and other relevant Elements of the Comprehensive Plan in making decisions on PUD rezoning applications. The following paragraph is based on these principles.
78. Under LU-1.3.1, the Commission must be guided by the FLUM to determine desired density around each Metro station. Also relevant is the GPM, which OP has acknowledged limits intensified development around the Brookland/CUA Metro station to areas on the north side of Monroe Street. (Ex. 80, p.6) It is also pertinent to consider the existing density of development on the Property, Square 3829, and the adjacent neighborhood. At present, 62.5% of the Property is developed in the R-2 Zone, which is low-density residential. The Commission finds that, if redevelopment of the Property can be justified due to its proximity to Metro, such redevelopment should be, at most, moderate-density mixed use. The project proposes 12,720 sq. ft. of ground floor retail space and an overall gross floor area of 198,480 sq. ft. Hence, 185,760 sq. ft., or about 94% of the total scale and bulk of the building, is proposed as dwelling unit space. The dominance of the residential portion of the building determines whether this mixed use is “moderate-density” or not. Under the FLUM, “moderate density residential” is equated with “low-rise apartment buildings,” 10-A DCMR § 225.4, whereas “medium density residential” is equated with “mid-rise (4-7 story) apartment buildings.” Id. § 225.5. Hence, even before considering what the FLUM has to say about future zoning of the

Property, the project, at six to six-and-one-half stories of predominantly residential apartment building, fits squarely within the medium density mixed use FLUM category. It is not a “low-rise apartment building” as that term is used in § 225.4. Because the project is too dense to be considered moderate density mixed use, it is inconsistent with the key Elements of the Comprehensive Plan that guide development in proximity to Metro stations.

Comprehensive Plan – Preserving Stable Single-Family Residential Neighborhoods

79. The Land Use Element of the Comprehensive Plan provides:

Protect and conserve the District's stable, low density neighborhoods and ensure that their zoning reflects their established low density character. Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale.

(10-A DCMR § 309.10 (LU-2.1.5))

80. The Land Use Element of the Comprehensive Plan also provides:

Discourage the replacement of quality homes in good physical condition with new homes that are substantially larger, taller, and bulkier than the prevailing building stock.

(10-A DCMR § 309.11 (LU-2.1.6))

81. The Land Use Element of the Comprehensive Plan also provides:

Discourage the zoning of areas currently developed with single family homes, duplexes, and rowhouses (e.g., R-1 through R-4) for multifamily apartments (e.g., R-5) where such action would likely result in the demolition of housing in good condition and its replacement with structures that are potentially out of character with the existing neighborhood.

(10-A DCMR § 309.13 (LU-2.1.8))

82. The Land Use Element of the Comprehensive Plan also provides:

Maintain zoning regulations and development review procedures that: (a) prevent the encroachment of inappropriate commercial uses in residential areas; and (b) limit the scale and extent of non-residential uses that are generally compatible with residential uses, but present the potential for conflicts when they are excessively concentrated or out of scale with the neighborhood.

(10-A DCMR § 311.3 (LU-2.3.1))

83. The Upper Northeast Area Element of the Comprehensive Plan provides:

Protect and enhance the stable neighborhoods of Upper Northeast, such as Michigan Park, North Michigan Park, University Heights, Woodridge, Brookland, Queens Chapel, South Central, Lamond Riggs, and Arboretum. The residential character of these areas shall be conserved, and places of historic significance, gateways, parks, and special places shall be enhanced.

(10-A DCMR § 2408.2 (UNE-1.1.1))

84. The Upper Northeast Area Element of the Comprehensive Plan in relevant part provides:

Encourage compatible residential infill development throughout Upper Northeast neighborhoods Such development should be consistent with the designations on the Future Land Use Map.

(10-A DCMR § 2408.2 (UNE-1.1.2))

85. The Urban Design Element of the Comprehensive Plan provides:

Regardless of neighborhood identity, avoid overpowering contrasts of scale, height and density as infill development occurs.

(10-A DCMR § 910.14 (UD-2.2.7))

86. As with the approach taken in relation to evaluating development in proximity to a Metro station, pursuant to IM-1.3.3, the foregoing Comprehensive Plan Elements must be considered together and harmonized to the maximum practicable extent in considering this project in relation to the preservation of existing single-family residential neighborhoods. The Commission does so in the following paragraph.

87. The project involves tearing down existing single-family homes in good condition in an otherwise stable single-family neighborhood of the Upper Northeast Policy Area, i.e., Brookland, leaving six single-family homes on the same block with a six to six-and-one-half story apartment building. The Commission finds that residential infill development, of which the project is a clear example, must be at a scale that will protect and preserve, not destabilize, adjacent low-density residential neighborhoods such as Brookland. In this case there is no evidence that the homes to be torn down to allow the project to be approved (in exactly the form, size and scale requested) are in a deteriorated or unstable condition. Nor is there any evidence that the adjacent single-family properties in Square 3829, or across 9th Street, 10th Street, or Lawrence Street, are in any deteriorated or unstable condition. Several homes on the Property would be replaced with an apartment building that is substantially larger, taller and bulkier than the replaced homes and the neighboring properties, whereas the FLUM land use category for 62.5% of the Property

is Low-Density Residential. Accordingly, while the moderate-density ground floor retail along Monroe Street would, considered in isolation, not be inconsistent with the foregoing Plan Elements, the remaining 94% of the gross area and bulk of the apartment building is inconsistent with the foregoing Plan Elements. In additional support of this finding, the Commission credits the compatibility analysis of architect Richard Houghton, as well as his testimony that there is no evidence that the project enhances nearby Brookland places of historic or otherwise special significance.

Comprehensive Plan - Consistency with the Generalized Future Land Use Map (FLUM)

88. As noted above, the FLUM designates the future land use categories for the Property as part Low-Density Residential. In actuality, 62.5% of the Project's footprint is on land that is classified under the FLUM as Low-Density Residential. The balance of the Project land is classified as either Moderate Density Mixed Use and Low Density Mixed Use. While the FLUM is not boundary or parcel specific, it is sufficiently detailed to approximate where in Square 3829 the FLUM does not recommend a future departure from Low-Density Residential use.
89. OP incorrectly stated in its January 9, 2012 report that that the FLUM designates more than half the Project as Moderate Density Mixed Use. OP corrected its mistake in its February 23, 2012 supplemental report in which it recognized that the majority of the Project is classified as Low Density Residential. Nevertheless, the Commission repeated the mistake in Order No. 10-28.
90. The Project would extend what is a predominantly Medium Density Residential use into an area the majority of which is recommended on the FLUM for continuation of Low Density Residential use. Because the FLUM is to be interpreted with a degree of flexibility, the Commission, in considering a PUD-based rezoning request, may have limited discretion to allow the minor incursion of a medium-density use into FLUM-designated Low Density Residential use land. But allowing such an incursion for a majority of the property would be tantamount to open disregard of the land use designations on the FLUM, designations whose importance is re-emphasized in considering residential infill development in the Upper Northeast Area. (See UNE-1.1.2). The Commission finds that the proposed PUD-related Zoning Map amendment to the C-2-B Zone District is inconsistent with the Property's designation on the FLUM. The Commission further notes that the Applicant's and OP's claim that the C-2-B Zone District is "congruent" with both the Moderate-Density Commercial Land Use category and the Medium-Density Commercial Land Use category in the Comprehensive Plan. (See Future Land Use Map and Categories, § 225.8 and 225.9) is incorrect factually and of no legal consequence in any event, as it would not be proper for the Commission to use a "congruence" standard in evaluating a PUD rezoning request.

Comprehensive Plan – Consistency with the Generalized Policy Map

91. The Generalized Policy Map (GPM) of the Comprehensive Plan provides:

Neighborhood Conservation areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will consist primarily of scattered site infill housing, public facilities, and institutional uses. Major changes in density over current (2006) conditions are not expected but some new development and reuse opportunities are anticipated. Neighborhood Conservation Areas that are designated "PDR" on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided.

(10-A DCMR § 223.4).

92. The GPM of the Comprehensive Plan also provides:

The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map.

(10-A DCMR § 223.5).

93. The Property is designated as a Neighborhood Conservation Area on the GPM. As OP has acknowledged, the Project is adjacent to, but not part of, the Land Use Change Area for the Brookland/CUA Metrorail station, and thus, the GPM does not provide that projects such as this are "preferred on the south side of Monroe Street." (Ex. 80, p.6) In addition, Square 3829, 80% of which is within the Property, is virtually surrounded by other Squares that are considered part of the Neighborhood Conservation Area. Given the large disparity in scale and height between the project and the adjacent low-density single-family homes, the project is inconsistent with the designation of the Property as a Neighborhood Conservation Area on the GPM.

Concluding Finding and Supplemental Findings

94. The Commission accordingly finds, in light of all the foregoing findings, that the project fails to meet the requirements for PUD rezoning or for the related Zoning Map Amendment. This conclusion is principally derived from the Applicant's failure to show that the project is not inconsistent with the various components of the Comprehensive Plan and SAP, as detailed above. The record in this case has also made the Commission aware that if this project were scaled down and resubmitted as a C-2-A PUD rezoning application, depending on the details, it would appear to be a project that all parties would support. Accordingly, the Commission will provide the Applicant, for future reference, some supplemental record-based findings supportive of the project in other

respects, as set forth below, in the event the Applicant were to consider such a resubmission.

95. Through rebuttal testimony and submissions at the February 2, 2012 hearing, the Applicant has responded to DDOT's recommendations in its report. The Applicant proposed appropriate TDM and Loading Management programs and agreed to prohibit the retail tenants from using delivery trucks that are larger than 45 feet. The Applicant's proposed provision of \$5 worth of fare on each SmarTrip card would be sufficient to encourage use of public transit, and performance monitoring would be necessary for a project of this size and nature. Further, the Applicant sufficiently demonstrated that residents would be encouraged to park in the underground facility and that adequate on-street parking would be available in the neighborhood during peak times. (Ex. 311; 2/2/12 Tr., pp. 193-198.)
96. The Applicant has also provided additional illustrations regarding landscaping, alternative views of the project, perspective renderings, and a proposed plan for the locations of the affordable residential units. (Ex. 308, 309, 312-315; 2/2/12 Tr., pp. 198-211.)
97. From evidence and testimony presented at the February 2, 2012 hearing, the Commission finds that the Applicant provided sufficient detail regarding its community amenities package and the nature of the contributions to community organizations.
98. The Commission further notes that in response to the Commission's Procedural Order dated March 12, 2012, the Applicant made several revisions to its proposed conditions to clarify their intent and to ensure that the promised public benefits would be delivered upon project approval.
99. Contrary to the assertion of the 200-Footers in their March 1, 2012 submission, there is no current Commission "policy not to accept Applicant checks to non-profit organizations instead of Applicant purchased/supplied hard amenities." Nevertheless, in response to the Procedural Order, the Applicant has included language in its proposed conditions requiring it to seek modifications if Dance Place or Byte Back have not used the funds as intended and has agreed to reporting requirements for the other contributions. Lastly, the Commission finds irrelevant the allegations that a member of the developer's team is on the Dance Place Board of Directors and the son of another has a position there. Neither of these associations lessens the value of the contribution because it meets the definition of public benefit in § 2403.6 and the radius and policy requirements of 11 DCMR § 2403.13.
100. The Commission notes the 200-Footers' concern that the proposed boundary for the recipients of the no-interest small business loans may not be the same as the new boundary for ANC 5A. That new boundary is effective January 1, 2013 as a result of the 2010 Census. Section 2403.13(b) requires that an off-site benefit must be located

within one-quarter mile of the PUD site or within the boundaries of the Advisory Neighborhood Commission for the area that includes the PUD site. During the Commission's discussion, the Applicant signified its willingness to utilize the future ANC 5B boundary in evaluating compliance with this provision.

101. The Commission also raised the question of whether the affordable housing being provided by the project should count as a public benefit. The Applicant has proposed providing no more affordable housing than is required by the Inclusionary Zoning regulations of Chapter 26 of Title 11. However, the Commission noted that the current R-2/C-1 zoning of the site would produce less affordable housing on the site than what is being provided under C-2-B zoning and requested the Applicant to calculate the difference.
102. In its submission dated March 1, 2012, the Applicant indicated that under the existing zone designation, the subject property would have to set aside between 4,350 to 7,200 square feet of gross area for affordable housing, while under C-2-B zoning the project would have to set aside 15,151 square feet for this purpose. (Ex. 335.) Using the higher figure of 7,200 square feet, the additional 7,951 square feet of affordable housing resulting from this PUD-related map amendment can be considered a public benefit of this PUD. It is, however, a benefit mandated by law, not by virtue of a voluntary proffer from the Applicant.
103. The Applicant's submission on February 23, 2012 addresses questions raised during the February 2, 2012 hearing, including those from the 200-Footers. There is disagreement among the parties about the adequacy of the community outreach to the 200-Footers and about the adequacy of the construction management agreement submitted by the Applicant in respect of some of the stated concerns of the 200-Footers. Further, there is dispute among the parties whether the final public amenities package submitted by the Applicant, including the additional information regarding the undergrounding of utilities along the Project's side of 9th Street, provides amenities which will sufficiently offset the potentially adverse impacts resulting from the project. Similarly, the 200-Footers maintain that the Applicant's additional architectural renderings and aerial perspectives of the project fail to demonstrate how the project is appropriate and respectful of the surrounding neighborhood, especially the rowhouses with residential use on 9th and 10th Streets. (Ex. 296, 296A, 296B, 298, 299, 318; 2/2/12 Tr., pp. 110, 130-1, 215, 243-4.) In view of the Commission's findings on inconsistency with the Comprehensive Plan, the Commission does not find it necessary to resolve these disagreements at this time.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities" (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development

and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience” (11 DCMR § 2400.2.)

2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, and yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment (11 DCMR § 2405.)
3. The development of the PUD project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.
4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The application meets the contiguity requirements of § 2401.3.
6. The proposed height and density of the buildings in the Project will cause significant adverse effects on adjacent and nearby properties. The intensity of the proposed development is inconsistent with Comprehensive Plan goals for development of this area as in proximity to a Metro station.
7. In its present form as a C-2-B zoned PUD, the application cannot be approved with conditions to ensure that any potential adverse effects on the surrounding area from the project will be properly mitigated. The Commission finds that the conditions of approval proposed by the Applicant are insufficient given the potential impacts of the project on the surrounding and adjacent properties.
8. The Commission finds it unnecessary to determine whether the benefits and amenities provided by the project are significant, or whether the project will offer superior features that will benefit the neighborhood to a greater extent than a matter-of-right development would.
9. The application seeks a PUD-related zoning map amendment to the C-2-B Zone District. The application also seeks limited flexibility from the Zoning Regulations regarding loading requirements and roof structure requirements. The requested rezoning to the C-2-B Zone District is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. Given the determination that the project cannot be approved as it is inconsistent with the various components of the

Comprehensive Plan, and the Brookland CUA Metro Station SAP, there is no occasion to consider these requests for zoning relief.

10. The Commission finds that the Applicant has not met its burden of proof on each material contested issue in this case. In the specific ways enumerated above, the project is inconsistent with and fails to foster the goals and policies stated in the Elements of the Comprehensive Plan, including the FLUM, the GPM, the Land Use and Upper Northeast Area Elements and the Brookland/ CUA Metro Station SAP. The Commission further finds that granting of the PUD-related map amendment could lead to more undesirable upzoning requests in the Brookland area, even though each PUD and related map amendment application presented to the Commission is evaluated on its own merit. In this case, the Commission finds that the proposed PUD-related map amendment to the C-2-B Zone District is for a PUD that would be inconsistent with the Comprehensive Plan and SAP, that is inappropriate in height and scale for the neighborhood, and that will offer a level of public benefits and amenities that project opponents claim is inadequate. The Commission finds that the Applicant has not met its burden of addressing each material contested issue. The Commission's judgment that the Project is inconsistent with the Comprehensive Plan is supported by sufficient findings of fact. The record supports each finding of fact with respect to the FLUM, the relevant Comprehensive Plan Elements, and the GPM.
11. The Commission is required under §13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns of the affected ANC. As reflected in the Findings of Fact, ANC 5A voted to support the application. The Commission has accorded ANC 5A the weight to which its recommendation is entitled. The Commission recognizes that the Applicant met with the community and the ANC on numerous occasions to address residents' concerns about the project. These efforts are commendable, but they do not cure the project's failure to demonstrate that it is not inconsistent with the Comprehensive Plan and the SAP.
12. The Commission is also required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP. The Commission has given OP's recommendation to approve the PUD and related Zoning Map amendment to the C-2-B Zone District the weight to which it is entitled, but must nevertheless conclude that the project cannot be approved in the C-2-B zone.
13. The Commission's overall impression of the record is that, if this PUD rezoning project were reduced in scale somewhat with application for lesser rezoning, such as to C-2-A, which the 200-Footers did not oppose, the rezoning of the Property has a significantly better chance of being approved under the applicable standards.

DECISION

Based upon the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia hereby **ORDERS DENIAL** of this application for Consolidated Review of a Planned Unit Development and related Zoning Map amendment to the C-2-B Zone District for the Subject Property (Lots 3, 4, 11, 22, and 820 in Square 3829).

On _____, upon the motion of _____, as seconded by _____, the Zoning Commission **ADOPTED** this Order by a vote of _____.

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on _____.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA B. BARDIN
DIRECTOR
OFFICE OF ZONING